

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA**

- Alexandria Division –

CARPENTER CHEMICALS LC

versus

TAEGER ENTERPRISES, INC. *et al.*

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Case No.: 1:10-cv-00791
(AJT/TRJ)

Motion Argument:
September 24, 2010

**PLAINTIFF CARPENTER CHEMICALS' REPLY TO DEFENDANTS' OPPOSITION
TO ITS MOTION TO COMPEL ANSWERS TO INTERROGATORIES
AND THE PRODUCTION OF DOCUMENTS**

Plaintiff Carpenter Chemicals replies to Defendants' Opposition to its Motion to Compel Answers to Interrogatories and Production of Documents.

In its Motion to Compel, Carpenter Chemicals demonstrates that the straightforward application of Local Rule 26(C) requires substantive responses to its discovery requests from the two Defendants. Defendants oppose the motion arguing that Local Rule 26(C) must be ruled "invalid." In this Reply, Carpenter Chemicals shows the avenues for changing a Local Rule are, as set forth in FRCP Rule 83, by amendment under the Rule 83 procedures and by abrogation by the circuit's judicial council. This Court should reject Defendants' short-cut approach to undermine a long-standing Rule of this Court.

The Motion to Compel discovery should be granted, and Defendants ordered to substantively respond to the discovery requests served two month ago.

1. Local Rule 26(C) is long-standing Rule of this Court, most recently reconfirmed by the judges of this Court in May 2009 when the Court reissued our Local Rules. The Rule remains in effect unless amended by the district court or abrogated by the Circuit's judicial council, under the procedures of FRCP Rule 83(a)(1).

Defendants take aim at Local Rule 26(C). The facts are clear that Defendants were served with discovery, made no timely objections, and have willfully failed to answer the discovery. They argue, however, that the Local Rule is "invalid". Opposition at 2.

The district court is bound to apply its own Rules. Indeed, Local Rule 1(A) directs that the Local Rules "... shall apply in all civil actions and civil proceedings in the United States District Court for the Eastern District of Virginia." A Local Rule remains in effect unless the district court amends it under the FRCP Rule 83(a)(1) procedures, or the judicial council of the circuit abrogates it.

Pursuant to FRCP 83(a)(1), the Rule that governs Local Rules,

... the Local Rule takes effect on the date specified and remains in effect unless amended by the court or abrogated by the judicial council of the circuit.

The judges of the Eastern District have repeatedly adopted Local Rule 26(C) in one form or another over the last decade without apparent concern of any inconsistency with the comments to the 2000 FRCP amendments cited by Defendants. The current Local Rules are from May 2009, and before that May 2007. Local Rules The C There has been no abrogation of Local Rule 26(C) by the Fourth Circuit's Judicial Council.

The process to amend a Local Rule comes also from FRCP Rule 83(a)(1):

After giving public notice and an opportunity for comment, a district court, acting by a majority of its district judges, may adopt and amend rules governing its practice.

Amendment and abrogation are the available avenues under the applicable rules--neither has happened.

2. Local Rule 26(C) is not “invalid.”

Defendants urge this Court to invalidate Local Rule 26(C). In doing so, Defendants ask the Court to by-pass the FRCP Rule 83(a)(1) procedures, reject the judgment of at least a majority of the judges for U.S. District Court for the Eastern District of Virginia, and discard a decade or more of history with the Local Rule.

Courts have inherent authority to manage their dockets, and the language of Rule 26(d) permits the Court to exempt certain actions from the discovery timing provisions in the Federal Rules. Local Rule 26(C) is a reasonable and permissible exercise of the Court’s authority. Under this authority, the Local Rule is not inconsistent with the Federal Rules.

In sum, this Court should stand with procedures in FRCP Rule 83(a)(1). If there are to be modifications to a long-standing Local Rule, the issues should be thoughtfully considered under the amendment procedures or by the circuit’s judicial council. This Court should reject Defendants’ effort to short-cut the proscribed processes.

Carpenter Chemicals’ Motion to Compel Defendants’ discovery responses should be granted.

Respectfully submitted,

CARPENTER CHEMICALS LC
By Counsel

/s/

James S. Kurz (VSB #16610)
Counsel for Plaintiff Carpenter Chemicals LC
ALEXANDRIA | FAIRFAX LITIGATION PLLC
1800 Diagonal Road, Suite 600
Alexandria, VA 22314
Phone: (703) 370-2096
Fax: (877) 370-2097
JKurz@AlexffxLitigation.com

John Ates (VBS #71697)
Counsel for Plaintiff Carpenter Chemicals LC
The Ates Law Firm, P.C.
1800 Diagonal Road, Suite 600
Alexandria, VA 22314
Phone: (703) 647-7501
FAX: (703) 229-6430
j.ates@ateslaw.com

CERTIFICATE OF ELECTRONIC SERVICE

I hereby certify that on September 22, 2010, I electronically filed the foregoing Reply with the Clerk of the Court using the CM/EF System, which will send notification of the filing to the following counsel of record:

Robert M. Tyler (VSB # 37861)
Attorney for Taeger Enterprises, Inc. & Jeffrey H. Thomas
McGUIREWOODS LLP
One James Center
901 East Cary Street
Richmond, Virginia 23219-4030
rtyler@mcguirewoods.com

Evan E. Miller (VSB # 37861)
Attorney for Taeger Enterprises, Inc. & Jeffrey H. Thomas
McGUIREWOODS LLP
One James Center
901 East Cary Street
Richmond, Virginia 23219-4030
rtyler@mcguirewoods.com

/s/
James S. Kurz (VSB #16610)
Counsel for Plaintiff Carpenter Chemicals LC
**ALEXANDRIA | FAIRFAX LITIGATION
PLLC**
1800 Diagonal Road, Suite 600
Alexandria, VA 22314
Phone: (703) 370-2096
Fax: (877) 370-2097
JKurz@AlexffxLitigation.com